

W. R. JORDAN AND MABEL JORDAN

NOVEMBER 12, 1943.—Ordered to be printed

Mr. ROBERTSON, from the Committee on Claims, submitted the following

REPORT

[To accompany S. 1391]

The Committee on Claims, to whom was referred the bill (S. 1391) for the relief of W. R. Jordan and Mabel Jordan, having considered the same, report favorably thereon and recommend that the bill do pass with the following amendment:

Page 1, line 6, strike out the figures "\$5,000" and insert in lieu thereof the figures "\$4,000".

The purpose of the proposed legislation is to pay to W. R. Jordan and Mabel Jordan, of Luverne, N. Dak., the sum of \$4,000 in full satisfaction of their claim against the United States for the death of their son, John Jordan, who died of injuries sustained by him as the result of an accident which occurred when the automobile in which he was riding was struck by a truck used for and under the control of the Work Projects Administration near Edinburg, N. Dak., on August 14, 1941.

STATEMENT OF FACTS

The accident occurred at about 11:30 a. m. on August 14, 1941, and was caused by the driver of a Work Projects Administration truck not stopping before entering State Highway No. 32 from the county highway. A coroner's inquest found that the death was caused by the negligence of Mike Fayette, the driver of the truck, in failing to yield the right-of-way to the automobile of the deceased which was traveling on the main highway. Criminal proceedings were instituted against Mike Fayette. He waived preliminary hearing and pleaded guilty to the charge of reckless driving and was sentenced to 90 days in jail. The report of the General Counsel of the Federal Works Agency states that the truck operated by Mike Fayette was being used by the Work Projects Administration in its operation of

the county highway improvement project and was under the direction and control of the W. P. A. foreman charged with the responsibility for the safe operation of the project, including the Fayette truck. The report of the General Counsel, Mr. Alan Johnstone, which is appended hereto and made a part of this report, contains a full statement of the facts of the case, and is self-explanatory. The Federal Works Agency has no objection to the enactment of the proposed legislation.

Due to the fact that the deceased carried a life insurance policy in the amount of \$1,000—which was paid to his parents, Mr. and Mrs. W. R. Jordan—your committee have amended the bill giving to Mr. and Mrs. Jordan the sum of \$4,000 instead of \$5,000 and recommend favorable consideration of the bill, as amended.

FEDERAL WORKS AGENCY,
Washington, April 23, 1943.

The Honorable ALLEN J. ELLENDER,
*Chairman, Committee on Claims,
United States Senate.*

DEAR SENATOR ELLENDER: Reference is made to your letter of September 28, 1942, addressed to the Work Projects Administration, and to my reply of October 2, 1942, relative to S. 2803, a bill for the relief of W. R. Jordan and Mabel Jordan.

The report of this Agency is as follows:

The bill proposes to appropriate to W. R. Jordan and Mabel Jordan of Luverne, N. D., the sum of \$5,000, in full satisfaction of their claim against the United States for compensation for the death of their son, John Jordan, who died of injuries sustained by him as the result of an accident which occurred when the automobile in which he was riding was struck by a Work Projects Administration truck near Edinburg, N. Dak., on August 14, 1941.

It appears that the Work Projects Administration undertook the operation of a duly authorized and approved county-wide road improvement project in Walsh County, N. Dak., one of the sponsors of which was Golden Township of that county; that Golden Township, as a project sponsor, agreed, and did furnish to the Work Projects Administration for use in the operation of the project, a truck and operator as a part of its sponsor's contribution contracting for such service and equipment with one Fred Fayette, the owner-operator of the truck, this truck being the truck involved in the accident which resulted in the death of John Jordan; that this truck along with other trucks supplied by the sponsors or the Work Projects Administration was used by the Work Projects Administration to haul gravel from a gravel procuring project to various locations throughout the county and at the time of the accident was under the direction and control of the Work Projects Administration foreman in charge of the project, as was also the driver of the truck, Mike Fayette, who was acting as substitute driver of the truck in the absence of his brother, Fred Fayette, because of illness; that the route of the trucks from the gravel pit was easterly along a county secondary highway which crossed State Highway No. 32; that the vision of persons driving north on State Highway No. 32 of the intersection of the county highway with the State highway was obscured by a hill adjacent to the approach of the State highway to the intersection and that the vision of persons so driving, of cars entering the intersection, east, from the county highway was limited by a church located north and east of the intersection; that the Work Projects Administration had attempted to maintain red flags warning drivers of the danger at the intersection but that on the day of the accident no such flags were in evidence; that all drivers of trucks on the project, including Fred Fayette, had been instructed by the Work Projects Administration project foreman to come to a complete stop before entering the intersection, but that the Work Projects Administration project foreman had neglected to so instruct Mike Fayette, the driver of the truck at the time of the accident; that Mike Fayette the driver of the truck at the time of the accident did not stop before entering the intersection; that the deceased, John Jordan, was traveling north on State Highway No. 32, and the truck operated by Mike Fayette was traveling east on the secondary county highway from the gravel pits; and that both vehicles entered the intersection at the same time, and the

truck struck the deceased's automobile on the left side while both vehicles were near the center of the intersection.

A coroner's inquest found that the death was caused by the negligence of Mike Fayette in failing to yield the right-of-way to the automobile of the deceased which was traveling on the main highway.

Criminal proceedings were instituted against Mike Fayette. He waived preliminary hearing and pleaded guilty to the charge of reckless driving and was sentenced to 90 days in jail. The sentence was suspended, however, due to the poor health of the defendant.

The liability of the Work Projects Administration, if any, would appear to be based upon the answer to the questions, "Whose work was Fayette doing?" and "Under whose control was he doing it?" In this respect the question of Fayette's employment by Golden Township is relevant though by no means determinative.

Insofar as herein pertinent the Manual of Rules and Regulations of the Work Projects Administration (vol. 2, Project planning and operation, ch. 5, General conditions of project operations, pt. 1, Authority and responsibility for project operations) provides:

"The Work Projects Administration is responsible for the general supervision of Work Projects Administration projects. While the responsibility of direct supervision of a project is usually vested in the Work Projects Administration, this responsibility may be delegated to the sponsor. * * * The Work Projects Administration also is responsible for * * * accident prevention * * * and for the care and disposition of * * * such sponsor's property as may be accepted into custody by the Work Projects Administration (p. 2.5.001).

"Funds appropriated to the Work Projects Administration are available primarily for the payment of wages to persons who are certified as in need. Since Work Projects Administration expenditures for nonlabor purposes are limited, the character and efficiency of the work program supervised or operated by the Work Projects Administration is largely dependent upon the ability and willingness of project sponsors to supply funds, services, materials, and equipment promptly in accordance with the agreement in the project proposal and as required for project operations" (p. 2.5.002).

"Specific responsibilities of the operating divisions in the operation of projects include the following:

* * * * *

"4. Requesting or approving requests for, and accepting and making proper use of materials, supplies, and equipment.

"5. Requisitioning or approving requisitions for labor, and accepting and directing labor.

"6. Control of sponsor's participation.

"7. Control of operations within physical and fund limitations, within approval purposes and methods, and within the limits defined in the administrative release of the unit.

"8. Compliance with safety policies and regulations * * *" (p. 2.5.005).

"A Work Projects Administration supervisory employee in charge of a project is responsible for (1) carrying on operations efficiently, safely, economically, and in accordance with accepted standards for the type of work involved; (2) controlling operations within the limitation of the work and funds authorized; and (3) the custody and control of all Work Projects Administration property and sponsor's property accepted by him for use on or incorporation in the project as a sponsor's contribution. In order that the supervisory employee in charge of the project may exercise this responsibility he has authority in keeping with the rules and regulations of the Work Projects Administration to (1) schedule and direct project operations; (2) request labor, equipment, materials, and other services; (3) control the use of all property over which he has accepted custody, and relieve himself of responsibility and custody over property in accordance with the procedure described on pages 2.5.023-2.5.025; and (4) direct, warn, and suspend the workers under his supervision, when necessary" (p. 2.5.007).

"If the offending person is employed by the sponsor or an equipment vendor and fails to respond properly to the directions of the supervisory employee in charge of the project or to the efforts of the area supervisor, the offending person's employer shall be notified and requested to take suitable action" (pt. III—Use and control of personnel and property. Relationship of supervisory personnel to workers; p. 2.5.018).

"Flagmen, warning signs, barricades, and lanterns or torches shall be used when necessary in project operations to safeguard the general public as well as project employees" (p. 2.5.039).

"The need for flagmen shall be determined solely by job conditions. * * * In determination of such need, consideration should be given to the possible use of warning signs and barricades" (idem).

"Flagmen should be placed where workers must cross and recross highways; where operations necessitate one-way traffic, and *where trucks or other equipment enter or leave highways if there is limited vision or where heavy traffic is involved*" (idem).

"In the conduct of project operations it is of utmost importance that careful consideration be given to the health, safety, and convenience of the general public. Under no circumstances shall any operation be carried on with unwarranted or unlicensed disregard of the public or the rights of individuals. The health and safety of the general public in any operation shall be fully safeguarded" (p. 2.5.051).

The following examples are illustrative of policies to be followed:

* * * * *

"6. No operation shall be conducted on public thoroughfares or passageways which will create any hazards to the public that are not protected with red flags, barricades, flagmen, or railings during the day and with flares or red lights at night. Ample warning signs shall be posted at all times" (p. 2.5.051).

"All power equipment, including trucks, to be used on Work Projects Administration projects, whether owned, rented, or borrowed by the Work Projects Administration, or furnished by a sponsor, shall be certified by the State safety consultant or a competent inspector approved by him before they are operated on or for a Work Projects Administration project" (p. 2.5.040).

Work Projects Administration Safety Bulletin No. 2 provides that "The person responsible for assigning trucks shall see that—

"Each driver of certified truck is provided with complete safety instructions on State and local ordinances; * * * Work Projects Administration rules about riders, etc."

The testimony of Clifford Wells, Work Projects Administration timekeeper on the project and an eyewitness to the accident, with respect to the questions here involved is as follows:

"Question. Is there a stop sign going into 32?

"Answer. No flag, no stop sign of any kind. We have instructions. I drive truck 32 of Walsh County. This man was driving for Latona Township and under the same instructions as we are. The instructions are that you are to stop on all highway crossings, railroad crossings, and intersections. They met at the dead center of the intersection; they were both thrown into the ditch. * * *

"Question. This is a Work Projects Administration project you are working on?

"Answer. Yes.

"Question. Is it a Work Projects Administration that he is working on?

"Answer. No.

"Question. Who issues these instructions to you?

"Answer. Dubuque.

"Question. He drives under the same instructions?

"Answer. He hauls from the same gravel pit and he drives under the same instructions and the same rules as the drivers do on this job.

"Stromli: He was hauling for Golden Township.

"Answer. Yes, that's right."

With respect to the question of limited vision at the intersection, Gilman Holm, a driver for the Farmers' Union in Edinburg and an eyewitness to the accident, testified as follows:

"Question. As you come north on 32 can you see any cars coming from the other road until you get up to the intersection?

"Answer. It is hard, the church is there and you got to come up a hill before you come up by the church there and then you can't see because of the church."

Ernest Dubuque, Work Projects Administration project superintendent of Walsh County, in his report of the accident states:

"The unit of the county-wide road project of which Mr. Mortenson was foreman had had red flags to warn the public posted on all highways crossed by the trucks. They had some 'Truck Working' signs on Highway 81. Several times during the summer I checked this safety precaution and was satisfied that due precautions had been taken. When I arrived on the scene of the accident I observed that there were no red flags on Highway 32 at that time. I asked the foreman why the flags had not been placed, and he said that they had been placing the flags, but apparently the highway patrol had objected to them and removed them. The project foreman had always had authority from the project sponsors to buy all of the

materials necessary for warning flags, and I have always observed a supply of flags in the project office.

"At the intersection at which the collision occurred the view is obstructed by a cut in the hill at the churchyard at the southwest corner of the intersection and by a steel fence around the yard. From the tracks on the road it seemed evident that the brakes on the truck had been applied sharply for a distance of about 50 feet before it reached the center of the intersection at which point the collision occurred. The witnesses stated that the driver of the car did not appear to see the truck at all and that the truck driver swerved his truck to the left in an apparent effort to avoid the car.

"According to the vehicle inspection report made on this truck on August 4 by Milo Mortenson, foreman on work project 3510-1, this truck was owned and driven by Fred Fayette and was furnished on the project by the project sponsors. Mr. Mortenson said that Mike Fayette had been driving his truck for the past few days in place of Fred Fayette who was reported as being sick. I know that Fred Fayette has always had a complete knowledge of Work Projects Administration safety regulations as he had previously driven trucks on our projects.

"Questioning the other drivers revealed the fact that Mike Fayette had not been making the stop at Highway 32. This fact was not known by the foreman until we questioned the drivers on the day of the accident. As Fayette was confined to the Grafton Hospital I was unable to question him to determine if he had attempted to make a stop before he saw the car on Highway 32.

"Drivers on the project had been instructed to make a complete stop before turning onto all crossings, any highways, or railroad crossings. There were safety posters on the project at all times cautioning the men to take these safety precautions. Mr. Mortenson stated that he had overlooked instructing Mike Fayette verbally on this point as he was a substitute driver for his brother.

"I also questioned Gilman Holm, driver of a Farmers' Union oil truck at Edinburg, who was an eyewitness to the accident. He stated that the gravel truck did not make a stop before driving onto Highway 32.

"The truck and driver involved in the accident were furnished to the project by the sponsor as a sponsor's contribution.

"At the time the accident occurred, I was Work Projects Administration project superintendent in Walsh County."

It is concluded, in view of the circumstances hereinbefore set forth and applicable rules and regulations of the Work Projects Administration cited, that at the time of the accident the truck operated by Mike Fayette was being used by the Work Projects Administration in its operation of the county highway improvement project and was under the direction and control of the Work Projects Administration foreman charged with the responsibility for the safe operation of the project including the Fayette truck provided by the sponsor.

If the Work Projects Administration as an agency of the United States were not immune from suit, the parents of the deceased would have had under the statutes of North Dakota a right of action against it. The applicable statute provides that in actions for the death of a person caused by a wrongful act, the jury shall give such damages as they think proportionate to the injury resulting from the death to the persons entitled to the recovery. In this respect, W. R. Jordan, the father of the deceased, has submitted a statement in the sum of \$895.25 covering funeral and miscellaneous expenses arising out of the death of his son. He states further that the value of the automobile immediately preceding the accident was \$300, and that the automobile had since been sold as junk at \$50. The files of the Work Projects Administration further reflect information that W. R. Jordan, the father of the deceased, does not have regular employment, is engaged at odd jobs of carpentry, notary work, and the sale of fire insurance; that Mrs. W. R. Jordan teaches in a rural school; and that the combined income of the father and mother for the year 1941 was a total of \$1,395.04; that their son, John, the deceased, had rendered financial assistance to them at times by making payments to the Home Owners' Loan Corporation on a mortgage on the family home, the amount of the mortgage being \$1,053.53; that he also gave financial assistance to his parents by aiding his two younger brothers, now in the armed services of the United States, in their school expenses. John Jordan, the deceased, was self-employed, being the coowner of a radio-equipment shop at Fargo, N. Dak. The deceased carried a life-insurance policy with the North American Life Insurance Co. of Chicago, Ill., in the amount of \$1,000, which amount was paid to his parents, Mr. and Mrs. W. R. Jordan.

Under the circumstances the amount which the bill would afford the claimant if enacted by the Congress does not appear unreasonable.

It is suggested that the bill be amended to reflect correctly the circumstances of the case by striking out the phrase "by a Work Projects Administration truck" and inserting in lieu thereof, "by a truck used for and under the control of the Work Projects Administration."

Photostatic copies of pertinent papers from the files of the Work Projects Administration are enclosed herewith.

The Bureau of the Budget advises me that there is no objection to the furnishing of this report to your committee.

Sincerely yours,

ALAN JOHNSTONE, *General Counsel.*

○